



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



SEP 29 2008

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DECISION

National Wildlife Federation
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Boulder, Colorado 80302

Colorado Wildlife Federation
1410 Grant Street, Ste. C-313
Denver, Colorado 80203

August 14, 2008 Competitive Oil & Gas Lease Sale Protest Of Parcels COC73064 through COC73094 Is Dismissed

NOTE: Due to the high volume of protests, the official BLM protest response is posted on the BLM Colorado website, co.blm.gov. This paper copy is provided to you as a courtesy.

Your letter was received in our office on July 30, 2008, protesting the above named parcels offered in the August 14, 2008, Competitive Oil & Gas Lease Sale.

Protest Point: Contrary to the written representation to Governor Ritter, the proposed leases do not contain No Surface Occupancy stipulations for all lands designated as Areas of Critical Environmental Concern.

Response:

With one minor exception due to a mapping error, all of the designated Areas of Critical Environmental Concern (ACEC) under the final Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) are entirely covered with one or multiple no surface-occupancy stipulations (NSO).

Protest Point: Contrary to the written representation to Governor Ritter, the proposed lease sale will proceed without the certification necessary to provide the State of Colorado its fair share of lease revenues.

Response:

This issue was resolved in August 2008. Certification has occurred, and the State of Colorado will receive its fair share of the bonus bid after the leases are issued. Furthermore, the State will receive significant royalty income as soon as production of petroleum products begins.

Protest Point: The BLM should engage in phased leasing rather than leasing the entire Roan Plateau Planning Area immediately.

Response:

The BLM in consultation and coordination with Cooperating Agencies (including Colorado Division of Natural Resources), and in consideration of public input developed the Proposed Plan to allow for controlled development of underlying natural gas resources such that important natural values are protected. The BLM concluded that phased leasing, unlike phased development, would result in greater habitat fragmentation. With different operators for each phase of leasing, there would be no incentive to consolidate production and transmission facilities. Each lease phase would result in distinct infrastructure. Due to reclamation requirements and maximum surface disturbance limitations (350 acres) long-term planning for phased leasing would be difficult and complicated for all parties (Letter from Stephen Allred to the Honorable Bill Ritter, Jr. dated March 13, 2008).

As outlined on pages 2-6 through 2-9 of the PRMPA/FEIS, both BLM and Colorado Department of Natural Resources (CDNR) determined that phased and clustered development, by a single operator, would reduce the surface disturbance footprint and minimize landscape fragmentation. The BLM and CDNR, when developing the proposed plan, also determined that phased and clustered development would be achieved through an undivided Federal unit agreement, which provides for a single operator. This will allow for development of the natural gas and oil resources atop the plateau while providing for stringent environmental protection measures, including a 350-acre limit on the amount of surface disturbance allowable at any one time. To implement the undivided Federal agreement as described in the June 2007 ROD (Section 6.2.6), it was deemed necessary to lease the entire upper plateau at one time with a requirement that the lessees commit to the undivided Federal unit agreement. Phased leasing could have created disincentives for potential bidders resulting in lower bid prices and would have complicated orderly planning of long-term development.

Protest Point: BLM has not adequately analyzed the impacts of the proposed lease sale on wildlife, wildlife habitat, and other natural resources on and around the Roan Plateau.

Response:

The BLM adequately analyzed direct, indirect and cumulative impacts to the extent that they were applicable to the resources affected. The PRMPA/FEIS analyzes the impacts of leasing-level decisions and addresses cumulative impacts relating to such leasing, based on a reasonable projection of activities. Your protest does not provide any new and significant information not considered during the analysis of the RMPA. Further site specific NEPA analysis would be required when specific development and production activities are proposed. Such specific analyses would provide for a more thorough examination of impacts related to the development of the lease parcels and provide for the application of site-specific conditions of approval.

The best management practices (BMPs) and other mitigation measures incorporated into the RMPA represent a range of methods that are proven to be effective in specific situations. At the implementation stage—e.g., preparation of master development plans for ridge-by-ridge development atop the plateau—BLM resource specialists will select the BMPs and other mitigation measures best suited to location-specific, resource-specific, and project-specific factors. Monitoring and adaptive management practices will be employed where appropriate. If development in the planning area exceeds the impacts analyzed, then the BLM would be

required to produce further NEPA analysis prior to approving the development.

Protest Point: The BLM has not analyzed the impacts of development during the full life of the proposed leases.

Response:

The PRMPA/FEIS analyzed the impacts of leasing-level decisions and addresses cumulative impacts relating to such leasing, based on a reasonable projection of activities. Further site-specific NEPA analysis will be required when specific exploration, development, and production activities are proposed. Such specific analyses would provide for a more thorough examination of impacts related to the development of the lease parcels and provide for the application of site-specific conditions of approval.

The BLM's policy in assessing the likelihood of development for mineral resources is articulated in the BLM's "Planning for Fluid Mineral Resources Handbook" (H-1624-1). Guidance from this handbook addresses the projection of reasonably foreseeable development under existing management conditions. The guidance directs an interdisciplinary team, "to project management activities and actions, including developments, which are likely in the planning area over the life of the plan (i.e., generally 15 to 20 years or whatever has been determined to be the planning horizon or timeframe for the RMP) assuming continuation of existing management." Also see National Wildlife Federation et al., 170 IBLA 240 (2006); Wyoming Outdoor Council, et al., 164 IBLA 84 (2004); BLM Land Use Planning Handbook H-1601-1(2005); and WO IM 2004-89. The RMPA was prepared following the direction in the aforementioned guidance.

The Reasonably Foreseeable Development scenario (RFD) is a planning tool which represents the BLM's assumptions regarding unconstrained development potential. The RFD assumes that only standard stipulations and technical limitations would be in place and thus, does not include the overlay of restrictions, stipulations, and timing. Drilling technologies may change dramatically over the course of the next twenty years, making far reaching predictions about the number of wells obsolete. Therefore, environmental impacts related to those wells are equally speculative. The 210-well figure used for analysis in the PRMPA/FEIS is based on the area projected to be available for drilling, seasonal constraints, limited drilling rigs, and the difficulty of access. Beyond 20 years, the areas available for drilling and locations of wells become highly speculative. The area projected to be available for drilling assumes a 350-acre maximum surface disturbance at any one time on the top of the plateau, with subsequent reclamation sufficient to minimize surface water runoff, prevent invasive weeds and attract wildlife. Most of the development in the first twenty years is anticipated to occur below the rim adjacent to producing reservoirs where access is not as constrained by seasonal considerations and land ownership. If development in the planning area exceeds the impacts analyzed in the plan, then the BLM will be required to produce further NEPA analysis prior to approving such development. Further, though an oil and gas lease may extend beyond the RFD projection, Section 6 of the Lease Form provides for environmental protection applied to individual leases. Stipulations placed on the lease at issuance continue to apply throughout the life of the lease (unless modified or waived, as provided by regulation). In the future, additional protective measures in the form of conditions of approval (COAs) will be applied if needed, based on site-specific analysis.

Protest Point: The majority of the proposed lease stipulations contain embedded waiver provisions that unreasonably and unlawfully grant BLM the authority to waive compliance

without public notice, opportunity for comment or protest, or environmental analysis.

Response:

Waivers defined in the RMPA comply with the provisions of 43 CFR 3101.1-4. As described in Appendix C of the PRMPA/FEIS, "Waivers are permanent exemptions to a stipulation area and are applied only after preparation of an environmental assessment and subsequent decision that a stipulation is no longer required to protect a specific resource. The decision to waive a substantial stipulation [of major concern to the public] requires a plan amendment and a 30-day public notice period prior to waiver." Even if a stipulation were deemed not to be of major concern to the public, granting of a waiver (or of an exception or modification) would require that the authorized officer determine that such waiver, exception, or modification would not adversely affect the resource intended to be protected by the stipulation. Decisions to grant waivers, modifications or exceptions affecting wildlife typically involve consultation with the Colorado Division of Wildlife.

Protest Point: The "exploratory well" exception to the phased development stipulation for the top of the Roan Plateau renders that stipulation ineffective.

Response:

Exploratory drilling will be allowed to the extent necessary to plan future operations so that the lessee/unit operator can develop a more specific Geographic Area Plan or Master Development Plan (which are required; see p. 2-56 of the PRMPA/FEIS). However such exploratory drilling would require further NEPA analysis. Exploratory activities would also be subject to the one-percent (350-acre) disturbance limit on top of the plateau (see the June 2007 Record of Decision at p. ROD-39 and Appendix F GS-CSU-ROAN-13 SSR/CSU).

Protest Point: The controlled surface use (CSU) stipulations are far too vague and leave critical decisions to be made without public review or environmental analysis.

Response:

The purpose of a CSU stipulation is to tailor resource protections to resource-specific, location-specific, and project-specific factors. The intent is to ensure protection of sensitive resource values while not necessarily precluding surface occupancy across the entire stipulated area, as is the case with an NSO. A CSU stipulation cannot always be determined *a priori* and therefore is flexible in how it would be applied to specific situations. See Appendix F of the June 2007 Record of Decision for a detailed description of CSU stipulations.

Further site specific NEPA analysis would be required when specific development and production activities are proposed. Such site-specific analyses would provide for a more thorough examination of impacts related to the development of the lease parcels and provide for the application of site-specific conditions of approval. Furthermore, it provides an opportunity for further public input.

The BMPs and other mitigation measures incorporated into the RMPA represent a range of methods that are proven to be effective in specific situations. At the implementation stage—e.g., preparation of Master Development Plans for ridge-by-ridge development atop the plateau—BLM resource specialists will select the BMPs and other mitigation measures best suited to location-specific, resource-specific, and project-specific factors. Monitoring and adaptive management practices will be employed where appropriate. The site-specific NEPA analyses would also provide a vehicle for analyzing the effects of these mitigation measures at the stage of the process at which their effects can be accurately analyzed.

Protest Point: The proposed lease sale will result in unnecessary and undue degradation of wildlife and wildlife habitat.

Response:

The protest does not show that any action authorized under the RMPA would result in unnecessary or undue degradation. Furthermore, the BLM has not determined that any activity authorized under the RMPA would result in such degradation. Indeed, the various protective lease stipulations, best management practices, and mitigation measures incorporated into the ROD – including phased and clustered ridgetop development atop the plateau and limiting surface disturbance at any one time to a maximum of 350 acres –will avoid unnecessary or undue degradation. Should the BLM determine that unnecessary or undue degradation will occur, the BLM will act to prevent it.

Your protest contains three specific sub-points. Responses to the sub-points follow:

Adequacy of ACECs

Response:

While this topic is not properly the subject of a protest to a lease sale, BLM is willing to reiterate its approach to ACEC designation in the plan amendment process.

The BLM considered a full range of alternatives regarding designation and sizes of ACECs. The agency examined the relevant and important values and special management attention to protect these values during the analysis in the DEIS, considered comments received by the public and cooperating agencies, and proposed the four ACECs included in proposed RMPA/FEIS. The BLM followed a process regarding designation of ACECs that allowed for further public review and comment to comply with 43 CFR 1610.7-2. The BLM's considerations included the determination that the proposed ACECs provide an adequate level of protection for the values present, including rare plants, sensitive wildlife, the Colorado River cutthroat trout, and visual resources, among others. These considerations are consistent with Federal Land Policy and Management (FLPMA) and BLM guidance (BLM Handbooks H-1601-1 and H-1613) and the requirement to analyze a range of alternatives (40 C.F.R. § 1502.14).

Although smaller in area than proposed by the Colorado Department of Natural Resources and various local communities, the final RMPA represents an increase in the acreage of ACECs as compared to the Preferred Alternative of the DEIS.

One or more NSO/NGD stipulations which protect a variety of sensitive resource values will be applied to leases issued within the proposed ACECs. Table 2.2 of the PRMPA/FEIS describes the proposed management prescriptions for ACECs and outlines such stipulations. For example, relevant and important criteria used to define the ACEC boundaries, and which would be protected by NSO/NGD stipulations, include high- and moderate-risk habitat for the Colorado River cutthroat trout for the Trapper/Northwater and East Fork Parachute Creek ACECs, wildlife security areas below the rim as mapped by Colorado Division of Wildlife (CDOW) for the Magpie Gulch and Anvil Points ACECs, and old-growth Douglas-fir forest for Magpie Gulch.

For public land and resource values atop the plateau that lie outside the boundaries of the ACECs, BLM has provided a variety of other conservation/protection safeguards, including a controlled surface use (CSU) stipulation for the entire Parachute Creek Watershed Management

Area, which includes all of the upper plateau.

Adequacy of Big Game Protections below the Rim.

Response:

In addition to NSO stipulations for all of the areas below the rim mapped by the Colorado Division of Wildlife as big game security areas, all areas mapped as deer and elk winter range would be protected with a timing limitation (TL) prohibiting construction, drilling, and completion activities during the period December 1 through April 30. Additionally, much of the winter range area is also protected through NSO stipulations for other resource values, such as steep slopes and sensitive I-70 viewshed areas. As noted in the PRMPA/FEIS at page 3-35, big game populations have stabilized or increased over the past few years in the Data Analysis Unit containing the planning area.

Adequacy of Well Spacing Restrictions

Response:

As summarized in the PRMPA/FEIS Table 4-13, the BLM's analysis shows that impacts from the Proposed RMPA for elk summer ranges are anticipated to be "negligible to minor," after the incorporation of the standards for mitigation described in Proposed RMPA/FEIS Table 2-1 on page 2-38 and Appendix C, Table C-1, on page C-23. The bases for the impact determination for deer and regarding summer range as "negligible to minor" instead of "moderate" include the following:

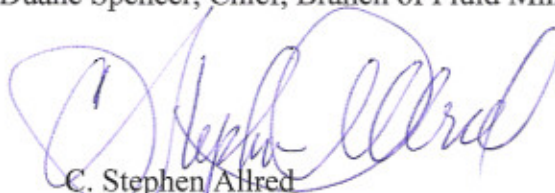
Oil and gas development at a 160-acre surface density (0.5-mile minimum separation) atop the plateau would be limited to one of six "development areas" at a time (see Figure 2-1). Thus, while one area is being subject to oil and gas operations, the other areas will remain available to deer, elk, and other wildlife.

The highest quality calving and fawning habitats are associated with the protected stream valleys, which are protected by a variety of NGD/NSO stipulations for other sensitive resources (see Map 8) as well as a specific Site-Specific Relocation (SSR) / Controlled Surface Use (CSU) stipulation for "big game security areas" identified by CDOW (see Map 19).

Regarding deer and elk winter range, note that Table 4-13 of the PRMPA/FEIS describes the impact level under the Proposed Action as "moderate." This impact level takes into consideration the fact that all winter range on Federal or split-estate land within the August 2008 lease sale is protected by a 5-month winter timing limitation stipulation, which prohibits construction, drilling, or completion activities from December 1 through April 30. Some of the existing Federal leases in winter range also include this TL stipulation. For older existing leases that do not have this stipulation, the BLM applies a 60-day TL (January 1 to March 1) as a condition of approval for drilling permits and the full 5-month TL for all right-of-way actions. The BLM concluded that requiring a 160-acre surface density in winter range below the Roan Plateau cliffs was not practicable due to the mosaic of land parcels and land ownership. Recent

increases in use of directional drilling has resulted in oil and gas operators frequently achieving a comparable surface density, with 16 wells or more on a single pad accessing 10-acre bottomhole spacing beneath 160 acres of surface.

Accordingly, on behalf of the Department of the Interior, I dismiss your protest. If you have any questions about this response, contact Duane Spencer, Chief, Branch of Fluid Minerals at 303.239.3753.



C. Stephen Allred
Assistant Secretary
Land and Mineral Management

cc:

State Director, Colorado State Office
DSD, COSO Division of Energy, Lands and Minerals
Field Office Manager, Glenwood Springs